IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 557 OF 2004

Dattatraya Ramchandra Mane ... Appellant

V/s

1. Rajaram Balu Mane & anr. ... Respondents

Mr. N.V. Walawalkar holding for G.H.Keluskar for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 23RD JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order dated 10.12.2003 passed by the Addl. District Judge, Islampur, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Islampur dated 31.3.1993 dismissing the suit.

2. The plaintiff filed the suit for perpetual injunction restraining the defendant from interfering into the possession of the plaintiff over agricultural land of Gat No. 1400 admeasuring 2 hectors 58 Ares and Gat No.1403 admeasuring 1 hector 45 Ares, situated at

village Nagathane, Tal. Tasgaon, Dist. Sangli. The defendants filed the written statement and sought for dismissal of the suit.

The learned Trial Judge adjudicated the dispute on merits on the basis of available evidence of both parties came to the conclusion that the plaintiff failed to prove that he is in possession of the suit land referable to lawful title. It was also held that the plaintiff failed to prove the alleged obstruction on the part of the defendants. On such and other grounds, the suit came to be dismissed.

3. The appeal was carried to the Court of Addl. District Judge, Islampur. On hearing both sides, the learned Addl. District Judge came to the conclusion that the appeal deserves to be dismissed and confirmed the order passed by the lower Court.

4. I have heard the learned counsel for the appellant. It is apparent from the record that both the Courts below have appreciated the entire evidence in proper perspective and it is held that the appellant - plaintiff failed to establish his exclusive possession over the suit fields much less referable to title and,

as such, the case of appellant in regard to the alleged obstruction cannot be accepted. It is also apparent that the respondents had examined one of the respondents and he was also cross-examined at length, but when the appellant had failed to establish his exclusive possession over the suit fields, the question of rebuttal evidence does not arise and suit for injunction simplicitor also must fail.

5. Time and again, the Apex Court has held that the concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of powers under Sec. 100 of C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. In the present case before us, it is really seen from the record that both the Courts below have properly appreciated the evidence on record and there is no substantial question of law involved in this appeal and, as such, the appeal deserves to be dismissed and stands dismissed.

(P.V. Kakade, J.)